



**NMLS Ombudsman Meeting**  
**Sheraton Downtown**  
**Denver, CO**  
**Plaza Ballroom D&E**  
9:00 – 12:00 p.m. Central  
August 6, 2013

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**I. NMLS Ombudsman Update – Exhibit 1**

*Timothy Siwy*

*Pennsylvania Department of Banking*

Opening remarks were made by Tim Siwy. Siwy provided a brief summary of his role as Ombudsman. He spoke to the most common issues he receives communication on: i) request for refund; ii) request for waiver of 3-time test failure and why certain questions are not scored, iii) request for state-by-state analysis of specific issues, and iv) issues with license processing times. The Ombudsman continues to work issues identified during meetings since it is not possible to resolve all issues during the course of the meeting. The following updates were provided:

**A. Reciprocal Licensing**

The following enhancements have been made to address this issue: i) banks' ability to see testing results has been removed; ii) transitional licensing is being offered by some states, and iii) the uniform state test was deployed. The number of new applications in Pennsylvania has doubled to 500 due to adoption of UST. Ohio has a transitional license and four applications have been submitted over the first 60 days. North Carolina just passed legislation to allow for transitional licensing and the provisions are effective September 1, 2013.

**B. What Constitutes Taking an Application**

Doug Lebda from Lending Tree – Gave a brief overview of the LendingTree business model of lead aggregator. Lending Tree is licensed in many states as a mortgage broker and has challenges complying with record retention and live signature requirements, among other things. The company is asking states to differentiate lead aggregators from traditional mortgage brokers and regulate them appropriately.

Siwy indicated Pennsylvania conducted an investigation of LendingTree. AARMR is making some progress on this issue. Charlie Fields (NC) met with LendingTree and obtained documentation of the LendingTree business model. The information was provided to the Multi-state Mortgage Committee.

**C. Document Upload**

NMLS staff assembled a committee chaired by Amy Greenwood-Field (NE). There are two places in the system to upload documents – disclosure explanations and document upload. MLO level advice on what to upload in connection with disclosure questions has been provided. Company advice regarding disclosure explanations will be provided shortly. The group is also working on providing guidance for Company/Branch document upload, including a naming convention for documents. The group is 80% complete with the project and hopes to complete the project by the NMLS Conference in Miami.

**D. Exempt Companies**

Certain states don't have the legal authority to put companies in as exempt companies. Regulators are working on creating a less extensive MU1 form for companies that otherwise do not need to maintain a license through NMLS, but need to file in NMLS in order to sponsor mortgage loan originators. Siwy encouraged industry to bring this topic to trade associations and directly with regulators that have requirements that are inconsistent with other regulators. The limited MU1 is on path for implementation in 2014.

**E. Power of Attorney**

Some companies have had difficulty getting control persons to attest and would like to use a power of attorney to make attestation on their behalf. This issue was discussed with all state regulators. Regulators were reluctant to adopt a policy related to this issue. The SRR Lawyers Committee studied the issue and indicated that regulators should not allow for this. The Committee characterizes attestation as a personal oath. Because it is personal information, the oath cannot be taken by someone other than the actual individual.

Tim Doyle indicated that NMLS does permit the compliance personnel to fill out the majority of the form and send it to the person to log in and attest. Regulators aren't able, and it's not appropriate, to accept an electronic attestation from someone other than the control person. Instead efforts will focus on improving the workflow for individuals that need to use the system to complete attestation.

**F. Renewal for MLOs on Active Military Service or Long Term Leave**

Can new application be avoided for mortgage loan originators when active military service or long term leave inhibits the ability to renew? There is a manual process that can be used to accommodate this. Information and has been made available to the regulators regarding this process.

**G. Forms and MCR Public Comment Period**

The comment period has closed for Forms and MCR. Comments have been reviewed and a regulator committee is working toward developing a recommendation for changes pursuant to the comments on the forms. The recommendation for changes will go out for another 30-day comment period. Changes will be implemented first or second quarter of 2014.

**H. Comments for K&L Gates**

Siwy reviewed topics that had been brought up in a memo from K&L Gates. (Summary attached.)

**II. NMLS Consumer Access - MLO Employment History**

*Andrew Hall*

*Royal United Mortgage*

Companies have concerns regarding self-reported data for employment history. Mr. Hall stated that a simple search through NMLS Consumer Access provided information regarding individuals who have a denied application who appear to still be under the employ of his company due to the self-reported employment information reflected in NMLS even though they no longer are under the employ of the company. He asked for enhancements that would illustrate the employment terminations the company makes so the information in Consumer Access relies more on company reported employment information and not just on individual self-reported employment information which may not be kept current.

Siwy indicated there have been some preliminary discussions on a resolution to this issue. When Consumer Access was updated last year, the self-report employment was updated to not display automatically – users have to click on the link to access the information. Consumer Access will display that they are not authorized to conduct business.

Josh Weinberg (First Choice Loan Services) recommended a stop or go sign. If the individual is active and approved by the company present a go sign; for individuals that aren't authorized a stop sign could be presented.

Tim Doyle explained that the SAFE Act requires NMLS to make employment history available on MLOs and that the self-reported information is presented to fulfill that requirement. He understands there can be discrepancies between sponsorship and self-reported employment. SRR is looking at this issue; however, an MLO without an active license cannot make an update to the self-reported employment history.

Siwy indicated he is aware of reputational risk and will continue to work on this issue.

### III. **Sponsoring Individual Licenses**

*Ellen Smith*

*Envoy Mortgage*

Ms. Smith asked what do regulators see as positives and negatives of sponsoring an MLO that is working for a company if the individual is not working in a position that requires licensure? Can the company sponsor a license so that it can be maintained even if the MLO is not originating for the company? Her company is exploring doing this as a courtesy for employees that have moved into other positions and do not want to give up the license and have to retake the test.

Oregon allows inactive licenses, but only until the license has not been sponsored for 3 – 5 years. If the company sponsors the license, they are indicating they accept responsibility for activities conducted by the individual. Oregon would hold the company responsible for acts even if the company didn't expect the individual to be conducting licensable activities.

Massachusetts has no issues with the company sponsoring the individual. They are not necessarily looking for the MLO to conduct origination activities.

Idaho concurs with Oregon and Massachusetts. Qualifying Individuals need to be licensed and in an active status as a Loan Officer. If an MLO holds a license it means they've met the criteria to maintain a license and Idaho wouldn't question lack of activity.

Siwy indicated it seems the consensus is that regulators would not have an issue with this. Pennsylvania wouldn't object to a company sponsoring a license for an individual not conducting MLO activities either.

Burton Embry (Primary Residential) asked if the mortgage call report should reflect the individuals with zeroes. Siwy indicated that, yes, the MLO would need to be listed on the Call Report and also would need to meet all individual licensure requirements.

### IV. **Licensing Ad Disclosure – Exhibit 2**

*Pete Mills & William Kooper*

*Mortgage Bankers Association*

William Kooper spoke about NMLS – what it has become and its place in the marketplace. As a reference point he quoted Q1 data indicating over 500,000 entities are licensed/registered through NMLS. Information is available to consumers. He felt this is an appropriate time to discuss NMLS as a tool to empower consumers. He specifically addressed additional state requirements in advertising disclosures above the federal requirements. In multiple states, he feels the intent of consumer protection is

not achieved when trying to communicate all information required by federal and state law.

He would like to eliminate the speed reading of disclosures or small print on written ads required to comply with requirements. As a result, he is asking the Ombudsman to look at the issue and consider a different approach. When requirements were initially layered in, NMLS did not have the standing it does today to provide information to consumers. He would prefer plain language replacement of the current requirements referring to licensing to direct consumers to NMLS Consumer Access for licensing information and all other information available through the website.

Siwy noted that certain. Statutory language dictates information that must be included in advertisements. He looked at this issue with Pennsylvania statutory updates and eliminated their requirements. Pennsylvania wanted to push consumers to NMLS Consumer Access information to get the most up to date information on the license status. However, it may be problematic for some states if opportunity to amend the law isn't available.

Bob Niemi (Ohio) – Ohio has the requirement to disclose this information. This issue would need to be brought up in legislation and go through the legislature. An industry representative stated that just having the NMLS number in the ad suggests that I am licensed, even though I may not be. The number only indicates that I filed through NMLS, not that I hold a license. We need to find a way to keep from tricking the consumer that the MLO is authorized just because there is an NMLS ID.

Kirsten Anderson (Oregon) doesn't see a way around communicating the NMLS ID. When searching for an MLO in Consumer Access it's easiest to look up for an individual with an NMLS ID number. Otherwise, it's difficult to pinpoint the exact individual you are looking for.

Nancy Walker (Virginia) indicated Virginia regulations were updated to require NMLS ID and web address for NMLS Consumer Access in all advertisements.

Deb Bortner (Washington) said if the ad is clear about going to Consumer Access that would be acceptable. In net branching circumstances, consumers can't tell the branch is actually connected to the company. Consumers aren't fooled by a number as numbers can be made up. Many consumers don't understand what the information in the ad really means. Consumers need clear directions to go to NMLS Consumer Access and know what to look for.

Siwy spoke to the fact that some jurisdictions have moved in the direction of requiring the NMLS ID and direction to NMLS Consumer Access. Do regulators with language requiring state-specific disclosures see an opportunity to make a change to this or do they disagree and want to make sure information regarding the company being licensed

in their jurisdiction is presented? No response. However, Siwy felt this might not be an issue for the NMLS Ombudsman but rather it might be better to address during regulator only meetings or at AARMR. He feels it is likely there will be more consistency over time.

Charlie Fields (North Carolina) felt the language provided by the MBA in the Ombudsman materials– for complete licensing information for company or MLO, refer to NMLS Consumer Access – is appropriate. He would consider putting this information in the ad as a best practice and would encourage other states to make changes. North Carolina only requires NMLS ID of the company or MLO.

Siwy feels that ads have to disclose unique NMLS ID number. He will see if progress can be made through discussions with other regulators.

Gus Avrakotos (K&L Gates) indicated best practice guidance would be helpful. He feels there is already movement toward this. He pointed to the umbrella provision in most statutes that regulators should make efforts to have requirements that aren't contradictory to NMLS requirements. If Ombudsman or NMLS Policy Committee provides direction, other states might make the necessary changes.

Amy Field (Nebraska) indicated their laws have additional requirements regarding advertisements – print ads must be legible and radio ads must be audible.

Mary Pfaff (SRR) questioned whether this should be an NMLS issue or an industry issue for best practices. She encouraged industry to talk to state regulators or industry groups.

Siwy indicated he would make sure this issue gets to the right forum. However, there are other avenues industry can use as well.

## V. **Mortgage Call Report (MCR) – Exhibit 3**

*Pete Mills & William Kooper*

*Mortgage Bankers Association*

The MBA appreciated the opportunity to provide comments on the MCR. However, they would like to investigate ways to get back to realignment on consistent data requirements between the MCR, HMDA and MBFRF. CFPB will be issuing a rule related to HMDA data later this fall. In addition, the MBFRF form is overdue for an update and that process is underway. They would like to see the MCR take advantage of revisions pending on HMDA and upcoming on MBFRF to come up with a single direction for collecting data. As a result, they are calling for a pause in the call report revision process to make sure the data stays in line with HMDA and MBFRF requirements – a single set of data and uniform requirements.

Siwy understand that a uniform data standard is the goal.

Tim Lange (SRR) indicated comment review is underway by the MCR working group. The MCR is based loosely on HMDA and MBFRF. The working group is looking at what sections should be consistent with other reporting requirements and who should be providing what information. Changes will be phased in over time in early 2014 or 2015. Proposed changes will go back out for comments.

Rich Cortez (Connecticut) said regulators are willing to put a hold on changes. The goal is to reduce the reporting burden. However, the MBFRF has data fields that don't belong or are misplaced, and the way some of it is presented is inaccurate. He would like to find an avenue to discuss what changes are being made to the MBFRF and HMDA. One problem is definition of what constitutes taking an application. In some cases, there will be issues where the different forms are not in agreement. Will work toward consensus, but can't guarantee it. Plan is to use data for risk analysis. MCR is partially modeled after the MBFRF; however, many companies talk about not using the form or only having to complete part of it. If the administrators of the MBFRF aren't making sure the information is being filled out properly, it uncertain whether we'd want to follow that model.

The MCR Working Group is comprised of 8 states (CA-DBO, CT, MI, NE, NH, PA, WA, and WV). The group meets a couple of times a month to resolve issues brought up regarding the MCR and reviewing MCR comments from public comment period.

Siwy indicated he will facilitate going to the group so concerns can be addressed.

During the AARMR conference, Kirsten Anderson (Oregon) and Chris Moore (SRR) will demonstrate how states are using MCR data.

## VI. **Loan Originators working from home**

*Jenifer Edwards*

*Primary Residential Mortgage, Inc.*

Primary Residential expects the MLO to work from the licensed location. However, MLOs were allowed to work from home at previous company and want to continue to do so. Some states don't have issues with MLOs working from home provided they "report" to an office. She would like feedback from regulators on how they feel about MLOs working from home.

Burton Embry (Primary Residential) illustrated a common scenario: the MLO comes to the company and never goes to the office but lives an hour away. The MLO spends his time around the town and takes applications in homes. The MLO generates disclosures

using the branch location but sends the disclosures out from their home. He gets full credit through the system for originating loan. Consumer doesn't come to the MLO's house. They use phone and computer to communicate with consumers. Their company doesn't want this to be considered activity not conducted from a licensed location.

Siwy indicated this issue has been addressed before. Regulators continue to work on this, but there are varying opinions. Pennsylvania understands this virtual origination scenario and took it into consideration when considering branch licensing. It is a bit complicated to determine whether the home location needed to be licensed as a branch.

Charles Knight (SC) indicated that South Carolina allows for the licensing of someone's home address. If the MLO is within 50 miles of a licensed location they can work from that location. If not, wherever they spend most of their time would need to be licensed as a branch.

Diaun Burns (CA- DBO) indicated her department license branches at an employee's home. The department is drafting regulations similar to securities requirements. With respect to oversight and supervision, the department asks for commitments made by the company and the MLO working remotely that they do not regularly meet with clients at a specific place. Specifically that the MLO does identify themselves with the company and that the information communicated by the MLO is for the company and not the MLO.

Kirsten Anderson (OR) said her department licenses home offices. If activity is intermittent, branch licensing is not required. However, if the MLO consistently works from home, the home location must be licensed. Home office needs to allow for appropriate protection of sensitive information (shredding credit reports). In addition, the MLO needs to be able to lock up consumer information so visitors to the house would not have access to PII.

Mike Larson (ID) said his department has a telecommuting policy and ability to license home locations. Communications must not include information regarding home location if not licensed.

Jack Konyk (Wiener Brodsky Kider) spoke about an MLO that does a lot of business with a builder. What if the builder invites the MLO to take applications from a model home? Does the model home need to be licensed as a branch office?

Keisha Whitehall-Moore (MD) indicated that Maryland does license in-home offices. The MLO is required to live within a 75 mile distance radius from a reasonable working location. If the licensed branch office is more than 75 miles from the location where the MLO is working, the other location must be licensed. The company must be aware that,



despite the distance greater than 75 miles, they must accept responsibility for the MLO. Maryland hasn't looked at licensing a model home location, but could do so.

Ron Bodvake (SC-BFI) said their department would license home office locations as branches. However, they have concerns regarding data and consumer security. Would want to make sure there are key-stroke protectors. The company has to designate the MLO as branch manager for the residence and should consider the risk of having an MLO work from a home location. The company is ultimately responsible for protecting all of the information collected at the location.

Charlie Fields (NC) indicated security and protecting access to consumer's information is of the utmost importance. His department is concerned with oversight and the tone conveyed to consumers if the MLO is not in a branch setting. North Carolina has a 90 mile commuting rule for reporting to a branch location. If the MLO is consistently meeting consumers at a particular location (Starbucks, McDonald's) it is problematic. North Carolina law indicates that a licensed branch office cannot be a residence. However, he acknowledges technology has come a long way and that regulators need to take that into consideration when looking at it again from a supervisory perspective to see if changes might be required.

Gus Avrakotos (K&L Gates) requested further thought be given as to whether branch offices should need to be licensed at all if the company takes responsibility of the activities of the MLO. He asked with the new way business is being conducted if there is any value in licensing branches.

Siwy asked companies what they did to supervise MLOs and ensure data security.

Josh Weinberg (First Choice Bank) indicated his MLOs work through a Citrix environment which prevents information from being removed or shared outside the system. His MLOs originate heavily over the internet. Looking forward, there will be more of an internet/telephone based model as consumers want MLOs to come to them.

Kirsten Anderson (OR) said that regulators write rules for companies who aren't trying to do this right. Oregon wants branch information so they know where to go to get documents and information if there is a company that goes out of business and leaves behind sensitive information.

Ron Bodvake (SC- BFI) is concerned with companies take responsibility. Regulators license, verify, and audit for a reason. Social media is causing security issues when MLOs use personal electronic devices to conduct business.

Siwy indicated that Pennsylvania took a close look at the possibility of eliminating branch licensing requirements. Instead, they introduced a regional concept in allowing MLOs to work for a branch within a 100 mile radius. The department expects

supervision and control of the employees. He feels that all regulators are concerned with supervision and control.

Gus Avrakotos (K&L Gates) pointed out that some states don't license branches outside of the state or any branches at all.

Mark Weigold (MI) indicated Michigan doesn't license branches at all. Michigan will visit MLOs who work out of their home if they have to. Michigan focuses on the company to make sure the company takes responsibility for its MLOs and will not just terminate the MLO and say they're on their own.

Kirsten Anderson (OR) spoke about a situation where people two tables away were taking a loan application. She tried to listen in to conversation and realized they were sharing a lot of personal information verbally. She learned employer, salary, debt, and SSN for the borrowers. MLOs should be careful about how information is collected in a public place. The MLO should have the borrower write it down and not share information verbally.

## **VII. Regulators definition of oversight and supervision of employees**

*Jenifer Edwards*

*Primary Residential Mortgage, Inc.*

Addressed with topic above.

## **VIII. Branch Licensing**

*Courtnee C. Kennedy, PC*

Ms. Kennedy addressed a scenario where a client is trying to license a location and asked about reciprocal licensing and leveraging all licenses held by an individual at a branch location. The branch can only designate one branch manager. That individual needs to hold about 15 MLO licenses and meet requirements of experience of the states. Then the individual doesn't meet the requirements of a particular state. How do I handle this if I need to designate a different individual for a specific state? Some states have allowed this to be handled outside of NMLS, but others aren't willing to this.

She would like the ability to name multiple branch managers that represent different regions or states. There is a lot of change in the industry and if the branch manager leaves it's cumbersome to get another individual to fulfill the requirements. If a location can have more than one branch manager, there is coverage if the other branch manager leaves. The system allows for designation of Qualifying Individuals for specific jurisdictions and allows for multiple Qualifying Individuals. Can the branch manager functionality parallel the Qualifying Individual functionality?

Tim Doyle (SRR) indicated that NMLS allows for a single branch manager for the mortgage industry. A single individual would need to meet the requirements for various states. The forms committee is reviewing this issue. If regulators decide to make this change, the technical implementation would not be too difficult. 123 companies have branches licensed in at least 11 states. The change would be implemented if the Forms Working Group and NMLS Policy Committee approved the change.

Siwy indicated there had been passionate debate among regulators on this topic during the regulator meeting the day before. Regulators are working on building consensus to have the change made. It shouldn't be too long before we have a final decision.

Deb Bortner (WA) said her department doesn't have a problem with allowing multiple branch managers. Ultimately the company is responsible for branch activity. The other point is to have a contact individual who is responsible. Her department would go up the chain and hold the company itself responsible.

Charles Knight (SC) made the point that when everyone is in charge, no one is in charge. If there are several branch managers in charge of one branch, should there be a primary branch manager with overall responsibility for the branch?

Jack Konyk (Weiner Brodsky Kider) indicated most offices don't have just a branch manager. There's also an assistant manager. It may be as simple as having a second in command so there's someone else to take over if one branch manager leaves.

Kennedy is concerned about redundancy. It's difficult to have both managers meet all state requirements. There isn't a need for 50 managers, but at least 4 would allow for regional responsibility. Therefore, it's not as burdensome to get licensed or replace a manager that leaves. She felt this is sensible from a compliance standpoint.

Siwy remarked on the flexibility. The discussion went from up to 50 managers down to 4. Regulators had discussed imposing a limit.

Gus Avrakotos (K&L Gates) said it's good to know the system is easy enough to change. If someone leaves, in some states the branch has to cease conducting business until you can replace the branch manager. It's difficult to get someone else with the licenses and experience to step in. Can there be a grace period to replace a branch manager that has left so the MLOs can continue to process loans in the pipeline and originate?

Siwy felt the discussion had adequately identified the need for companies to be able to identify more than one branch manager.

Charles Knight (SC) brought up call centers that take calls regardless of where they're from. He feels that supervision is a major issue.

Charlie Fields (NC) is hopeful the change can be made. North Carolina has control and supervision requirements. If company is listing more than one branch manager, the regulator will address the issue with the company and with the individual identified for the company. It's the larger companies that will get the benefit. If a single branch manager had to manage all requirements, all their time would be spent complying with those requirements instead of managing the activities of the branch. Smaller companies likely won't take advantage if the ability to name multiple branch managers is granted.

Hayden Richards (Dykema) indicated having 50 different managers could be problematic depending on the size of the branch. One person could be the primary branch manager with a few other people named to handle specific jurisdictions.

Sam Wolling (Prospect Mortgage) said it is commonplace for larger companies to have regional officers. In some circumstances, it's more than a branch, it's a hub. Such branches need to have similar abilities for branch managers as the MU1 does for the Qualifying Individual.

Ray Grace (NC) felt there was an analogy between this issue and how banks handle multi-state management. There are 50 sovereign states with sets of statutes and requirements on the matter. He recognized that large companies have more resources and are more sophisticated and have a level of control and responsibility without focusing on single offices. In a large bank environment such as with BB&T with branches in 20 or more states, the bank establishes accountability if something happens in a particular state. Issues can be managed at branch level or kicked up to corporate. He encouraged looking at a system more top down instead of bottom up and using models from other industries to establish control and oversight.

Charles Knight (SC-DCA) indicated that every bank has someone in charge for a branch. In addition, bank operations are in that local area, not in 50 states. That branch is only for the local community. Sometimes SC does unannounced examinations and finds that no one is in charge. He is concerned if there are multiple branch managers, who does he talk to regarding the issue related to the branch? What if the branch is putting records in a dumpster? Only the local branch has information regarding that issue. He felt that big companies are not always the answer. There was a 50-state mortgage lender that went under overnight. Big doesn't mean better control.

Siwy indicated he would take this issue to the right forum and have something by the NMLS Conference in Miami.

## **IX. Pre-Notifications Amendments**

*Courtnee C. Kennedy, PC*

Checklists do not match statutory requirements. Checklists are legislating timeframes that are not supported by statute. What if a company meets the checklist requirements but not statutory requirements?

Why isn't a company allowed to put in the date a change actually took place in if it's before the date of the filing?

Josh Weinberg (First Choice Bank) indicated there isn't any clear direction on what changes need to be pre-notified. Who's an officer? What if they've been an officer who hasn't been subject to disclosure until now?

Gus Avrakotos (K&L Gates) was concerned that there are completely new requirements for Advanced Change Notice that didn't exist before NMLS. There is an advance notice requirement of a change in a control affiliate, but there are not any statutory requirements for this. One state requires 60 day change notice of a change in control affiliate but not for an indirect owner. Advance notice of a change of subsidiaries and affiliates was never required before.

Siwy indicated that NMLS provided functionality for Advance Change Notice. Siwy gets a lot of complaints that documentation is not kept updated. NMLS tries to get states to keep information updated but ultimate responsibility remains with the states. He encouraged companies to go to the state if the Checklist conflicts with statutory requirements for the state. Is it more than a handful?

Gus Avrakotos (K&L Gates) indicated it's a fair number of states where this issue arises. Is there going to be a sanction if the company follows the statutory requirement for notification and not the checklist requirement?

Tim Doyle (SRR) said that Advance Change Notice was in direct response to industry requests to be able to provide advance notice of changes. SRR opted not to build a system where every state has the ability to have differing requirements for submission. States can opt in for 30 day advance notice or opt out if their requirement differs.

Tim Lange (SRR) indicated that Advance Change Notice was built to allow regulators to opt-in to certain requirements. 30-day notice is required for all events the state opts in to receive notice for. If the company doesn't provide 30 day notice, it will receive a warning. Up until now, the System was only real time. Over time the requirements will be refined so everything is accounted for properly.

Tim Doyle (SRR) thought it was better to have more standardized functionality. NMLS is easier to use if states can standardize requirements instead of having states dictate different parameters for every requirement.

Siwy indicated he expected there would always be issues with new functionality. Feedback allows NMLS to be refined to accommodate real-world situations.

Tanya Anthony (GreenTree Servicing) asked for a cheat sheet of the different state advance change notice requirements then. This would be extremely helpful instead of having to go to the checklist for each state.

Kirsten Anderson (OR) indicated there is a list on the NMLS Resource Center.

Keisha Whitehall-Moore (MD) shared that Maryland has two notices where statute mandates timeframe. The Maryland Checklist specifies penalties for failure to provide sufficient notice. Maryland selected 60 days for other changes to have a consistent policy but can work with shorter timeframes.

Siwy asked states to accept feedback directly to improve Checklists.

Gus Avrakotos (K&L Gates) shared that the system allows the regulator to provide status of the Advance Change Notice, even if state doesn't require approval of the ACN. Can an update be made to indicate notice has been satisfied instead of approved in these situations?

Siwy indicated changes to this functionality are still under consideration. The earliest a change can be made is early 2014.

## **X. Open Discussion**

### **A. MLO NMLS ID**

Carol Queen (Penny Mac) asked about the NMLS ID being the number the MLO has for life. An MLO has taken some time to get qualified to apply for licensure, but tried to submit a filing and found that the account was no longer available.

Tim Doyle (SRR) spoke to the fact there is no upfront verification of data. NMLS temporarily assigns an NMLS ID when a person makes an initial record in the System. The number and record not considered valid until the MLO has started to fulfill licensing requirements (testing/education) or a filing has been submitted in the system. If that has not happened with 120 days, the account becomes dormant and the NMLS ID is no longer associated to the MLO. Once the application has been submitted, the NMLS ID is considered valid for the MLO.

### **B. PE Expiration**

Carol Queen asked about the consideration of PE expiring after 3 years. Carol indicated she felt that it had already happened to an MLO in at least one state.

Rich Madison (SRR) indicated that three states require 20 hours of pre-licensure education 24 – 36 months before approving a license request. States are independently enforcing this requirement. If individual is licensed in multiple states – the individual must complete continuing education for the other states. There have been discussions about expiring PE for all states if the individual never got licensed after completing education (similar to test expiration). The draft policy will be sent out for public comment within next 30 – 60 days. The draft has gone through MTEB and NMLS Policy Committee.

### **C. Individual License Revocation**

Josh Weinberg (First Choice Bank) acknowledged CSBS staff for personal efforts. He spoke about a state revoking a license for an MLO. The MLO didn't change information in NMLS when employment changed and he no longer had an in-state sponsor. The state where they were previously licensed tried to contact them. Individual did not receive notifications and did not respond. The license was subsequently revoked. His company was successful in getting the revocation overturned. He cautioned states from revoking a license and killing a career due to this situation.

Siwy indicated that state regulators have had extensive conversations regarding this issue.

### **D. Miscellaneous Topics**

Gus Avrakotos (K&L Gates) indicated state laws have been set up to require corporate level licensing for lead aggregators. Some states also require licensure for processors and underwriters. Having to get corporate broker license to conduct these activities means they are subject to requirements for traditional brokering activities (disclosures, etc.). These are not activities that processors and underwriters conduct. Some states have amended their laws so non-traditional brokers do not have to meet the requirements.

Branch Licensing – Why one person can't manage more than one branch if proximity is close. Some states allow this but not all do. Why do some states require separate suites in the same building or same professional campus to be licensed as separate branches (need additional space due to expansion) when there's one central address/phone number, etc.?

Siwy indicated that these are topics for the next Ombudsman meeting at the NMLS Conference in February.

Tim Siwy made closing remarks, including thanks to AARMR. The next Ombudsman session will be February 18, 2014, in Miami prior to the NMLS Annual Conference.

## **NMLS Policy Committee Issues K&L Gates Memo/Policy Committee Responses**

### **1. Filings for d/b/as - NMLSPC**

There is no uniformity or consistency in the manner in which the states license entities who seek to do business under a d/b/a. We would hope that state laws can be made more uniform in the next few years. For now, we would welcome more guidance from the NMLS as to how d/b/as and other trade names should be handled.

The majority of the states will amend an entity's license to allow the entity to also conduct business under one or more properly authorized d/b/as. A few states will require the entity to file for and obtain a separate license to be issued in the name of the d/b/a. Therefore, in those states, we have one legal entity, with one NMLS account record, but multiple state-issued licenses. Then we also have Massachusetts, which is a world on to itself.

Issues arise in the manner in which a licensee provides and maintains the relevant information on its NMLS record involving d/b/as. The NMLS provides scant guidance, other than providing that: (i) the "other trade names" page of the NMLS must be completed for all names used, (ii) the NMLS allows an unlimited number of other trade names, (iii) the licensee should not use "dba" in front of their other trade name (presumably on the NMLS), and (ii) licensees should check the state license requirements.

No guidance is provided as to:

- (i) the manner in which an entity's Unique Identifier is to be used if a state issues multiple licenses for entities using more than one d/b/a;
- (ii) the sponsorship of a licensed MLO originating mortgage loans for an entity under each licensed name in a state; or
- (iii) whether branch offices can do business under separately authorized trade names.

In the states that issue separate licenses, one for the corporate name, and one for each authorized d/b/a, we would think that the Unique Identifier of the entity will be used for each license. The NMLS Guidebook should provide more complete direction as to how this use of a d/b/a should be addressed.

Moreover, direction also is needed with respect to the MLOs sponsored by the entity if it has been issued multiple licenses by the state. As we understand, the sponsorship of an MLO in the NMLS is tied to the company record and not to the specific license type held by the company in a given state. Under that position, the MLO would include his or her Unique Identifier whether originating loans under the corporate name or the d/b/a. As we understand, some states take the position that an MLO can be associated with only one license, either the license in the entity's corporate name or the license with the d/b/a, but not both. This would appear to be inconsistent with the underlying framework of the NMLS. In any event, we need clarification as to the manner in the use of d/b/a should be handled in the NMLS, and certainly more guidance from the states for the companies and their sponsored MLOs if the company operates under separate licenses for different d/b/as.

**Response:** This issue generated a discussion of some of the problems related to the use of multiple dba's at one location (a NJ licensee using 5 or 6 different DBAs with MLOs licensed in NJ and attached to unregistered locations/same address that have multiple licenses which



raises sponsorship issues). Some states such as Iowa, Nebraska and Vermont permit only one DBA per license. Need more clarification/guidance from those states that have more complicated laws and more clarity on how NMLS handles DBAs.

## **2. The Qualified Individual**

A handful of states required a Responsible Individual, Principal Representative, or a person equivalent to a Qualified Individual ("QI") "Before NMLS" ("BNMLS"). Since the advent of the NMLS ("ANMLS"), more states are "regulating to the NMLS" and requiring a QI or equivalent. As more states move to require a Qualified Individual, there is a fair amount of uncertainty and inconsistency as to certain requirements applicable to the Qualified Individual. With the QI being a creation of the ANMLS period, it would seem reasonable to expect there would be some degree of uniformity and conformity with respect to some of the requirements for the QI. We recognize that this might not be the case with respect to the experience requirements of a QI, or if the QI needs to be licensed as an MLO in a state, as it varies by state, but for other issues, some further consideration must be given as to the requirements generally applicable to the QI.

For example, if a QI leaves a licensee without notice, or unfortunately dies, some states provide a licensee 30 or more days to find someone with the requisite experience, and perhaps an MLO license, to replace the QI. A couple states, however, take the position that the licensee must suspend its licensable business activities if it has lost the services of its QI. A licensed mortgage lender or servicer cannot stop dead in its tracks or consumers and its employees are harmed. States who require a QI should provide a reasonable amount of time to replace the QI.

Some states require the QI to be located in the licensee's principal office or headquarters listed in the Company's NMLS Account Record, even though such principal office may not originate mortgage loans. Other states do not require the QI to be physically located in a particular location. The states that impose an in-state office obligation as a condition of licensing (which requirement is unconstitutional) and require the QI to be in that in-state office make the QI obligation even more burdensome.

The NMLS should provide better jurisdiction-specific information with respect to the QI. A simple issue of the address of the QI provides different guidance in the jurisdiction-specific information of the states. Below is what the NMLS jurisdiction specific information of certain states provides. The first two states do not address the physical location of the QI just that the QI must be named on the Company Form. These two suggest that the QI can be located anywhere. The third state is more specific as to what is required for QI, but still raises questions regarding the address of the QI. As for the fourth state, I have no clue as to what is required.

### **(i) STATE A**

**Qualifying Individual:** Each applicant must designate a person or persons to serve as the Qualified Person ("qualifier") in charge of first lien mortgage lending. Such person must have two years verifiable experience in the business of making or underwriting of residential mortgage loans or similar lending and credit evaluation experience and be actively engaged in the operations of the lender. This person must be designated and entered in the Qualifying Individual field in the Company Form. An Individual Form must be completed for the qualifier.

### **(ii) STATE B**

**Qualifying Individual:** The sole proprietor, coventurer, general partner, principal officer or member who has at least 3 years of experience in the mortgage lending business must be listed on the NMLS Company Form. The jurisdiction for which this individual is acting as the qualifying individual must also be specifically identified.

### **(iii) STATE C**

The person designated as the Qualifying Individual with the company for STATE C (possessing the required experience) must be identified on a company's Form MU1 filing (under the *Qualified Individual* Section) and submit a Form MU2. In addition, the person designated as the Qualifying Individual must also file Form MU4 and be licensed as a Mortgage Loan Originator per STATE C's licensing statute. Only one (1) Qualifying Individual may be listed for the STATE. In addition, the Qualifying Individual's **employment address** must be at the MU1 address of the company and the individual **MUST** reside within 125 miles of the company's MU1 address. **NO EXCEPTIONS ARE MADE TO THIS REQUIREMENT.**

While this STATE C indicates that the QI's **employment address** must be the address of the company, it does not indicate whether the QI must be physically located at that address.

### **(iv) STATE D**

**Qualifying Individual:** An **on-site manager is required to be appointed for all locations** where mortgage brokers conduct business with state consumers. This individual, referred to as the Branch Manager in the STATE, must be listed as the "Qualifying Individual" on the Company Form, **and his/her business address must match the address listed as the "Main Address" on the Company Form.**

State D is representative of some of the more common language for the QI. (here for a Mortgage Broker License). It is unclear what is required. Does this mean that there is an on-site manager located at the "Main Address" that is appointed for **all** the licensed locations or are there QIs appointed at **each** licensed location as an on-site manager, branch manager, etc. If so, then will the applicant/ licensee need to list each branch manager as a QI with the "Main Address" on the Company Form and not the address where that branch manager is physically located?

In any event, the NMLS should be able to provide clearer jurisdiction-specific guidance as to what is required to satisfy the QI obligations.

**Response:** Agree that state agencies need to review their respective license checklists but also recognize that this is a time consuming task and that the checklists are not meant to be a full substitute for a complete review of individual state laws and regulations. Implementation of the Advance Change Notice functionality should help alleviate some of these issues as use of that functionality will require states to publish their specific time periods and, as the functionality becomes used more broadly, will most likely cause a move towards more uniformity in those time periods (and the events that trigger them).

Recommend that a separate QI and branch manager qualification section be added to the checklists (must be licensed; residence location, etc.)

### **3. Jurisdiction-Specific Information Inconsistent with State Law**

As a general matter, it is not uncommon to find that the jurisdiction specific information on the NMLS does not match up with the actual state statutory or regulatory provisions, or the written policies of the state. We have had licensees rely on the jurisdiction-specific information in the NMLS, and then get fined or sanctioned by a state as licensee violated the state's requirements. Someone with the state should take responsibility for ensuring that the NMLS jurisdiction-specific information is consistent with state law. Optimally, the jurisdiction-specific information must conform to the state's requirements. Minimally, a state should not fine or sanction a licensee for relying on the bad direction in the NMLS jurisdiction-specific information.

**Response:** All states should review their checklists (should be the focus of an All States call). However, this information must be viewed as a starting point and the applicant should be reviewing the various state law provisions.

### **4. Loan Processors and Underwriters**

The provisions of the SAFE Act dealing with loan processors and underwriters are the most convoluted and ambiguous provisions of a number of convoluted and ambiguous provisions in the SAFE Act. The intent of Congress in including the loan processor and underwriter provisions as part of the SAFE Act is unclear. Nevertheless, each state has enacted legislation to implement the SAFE Act and included certain provisions dealing with loan processors and underwriters in its mortgage lender or mortgage broker licensing law or its MLO licensing law. We have reviewed each state's law applicable to loan processor or underwriters, and with respect to loan processors or underwriters (i) some states followed, or largely followed, the Model State Law provisions, (ii) some states largely followed the SAFE Act, but (iii) few states adopted the actual language of the SAFE Act. As a result, we have some states where:

(i) the company must be licensed as mortgage lender or broker to conduct contract loan processing or underwriting activities and its W-2 paid employees must be licensed as MLOs;

(ii) the company must be licensed as a mortgage broker to conduct contract loan processing or underwriting activities, and its W-2 paid employees conducting the actual loan processing and underwriting activities are relieved of licensing as MLOs, if they are supervised by a licensed or registered MLO employee of the company;

(iii) the company is not subject to licensing as a mortgage broker or lender to conduct contract loan processing or underwriting activities, or is exempt from such licensing, and is directed to file for an exempt company registration on the NMLS to be able to sponsor one of its

employees as a licensed MLO so that such employee can supervise the company's other employees engaged in loan processing or underwriting activities, and relieve those other employees of needing to be licensed as MLOs;

(iv) the company does not need to be licensed as a mortgage lender or mortgage broker to conduct contract loan processing or underwriting activities, and its employees do not need to be licensed as MLOs to conduct contract loan processing or underwriting activities, or

(v) the position of the state's regulators remains unsettled when it comes to loan processing or underwriting activities.

For the states that have concluded that the entity conducting contract loan processing or underwriting activities must be licensed as a mortgage broker, a new issue has emerged as a company obtains a license to conduct those licensable processing or underwriting activities. For example, by being channeled into getting a mortgage broker license, the company finds that it is now subject to those provisions in the licensing statute that impose certain practice and compliance requirements typically required to regulate traditional mortgage brokering activities, including but not limited to, (i) entering into mortgage broker agreements with consumers when there may be no contact with consumers, (ii) providing broker-required disclosures (iii) imposing fee requirement or restrictions, and (iv) requiring that certain records or documents be retained.

How does an entity that does not conduct those activities typical of a mortgage broker comply with some of the state mandated-requirements applicable to a mortgage broker? One or two states may have adopted a separate category of licensing called "processor/broker." A state or two may be amending its practice and compliance provisions applicable to mortgage brokers in recognition of the limited activities that loan processors and underwriters conduct. Other states may not have addressed this issue. We raise this issue for the states that seek to license contract processors and underwriters as mortgage brokers or mortgage lenders to consider the issue and limit the practice requirements that should so apply to those entities who are licensed as brokers or lenders in name only.

**Response:** States are beginning to address these issues and we support those continuing conversations. There is no real System issue here, but rather state law and regulations govern. (In essence, much the same issue as has been raised by the lead generators regarding what is the appropriate license type/regulatory requirements for those entities that do not engage in mortgage banking or mortgage brokering but do need to supervise MLOs.)

## 5. Renewals

With the expansion of the NMLS to include a wide range of state licensing laws, is there any consideration being given to having two different renewal dates? For example-- one for mortgage finance licenses, and one for all other state licenses, or some other staggered approach to the renewals. We recognize the underlying objective for uniformity that drove the decision to have one uniform renewal period when the NMLS was first created, and to get away

from the manner in which each state handled renewals for mortgage finance licenses. However, since the creation of the NMLS and the licensing obligations for entities engaged in making, brokering, or servicing mortgage loans, the NMLS is the system used to provide for the licensing of MLOs, entities and individuals engaged in loan processing or underwriting activities, loan modification activities, collection agencies, money transmitters, money service businesses, consumer lenders and all manner of other state regulated consumer financial service providers. Perhaps last year was an anomaly with a greater number of end-of-the-year transactions taking place in 2012, given the tax law changes being implemented in 2013, but it seemed that getting all the renewals done in the two month period taxed the system. Putting aside the tax-motivated changes that led to many end-of-the-year regulatory and licensing-related filings being made in the NMLS in 2012, and that need to be approved by year's end, we have concerns that 2013 and the out years will continue to bog the system if all the renewals for all licenses are done at the end of each year, when there are less days to process filings given the holidays, end-of-the-year vacations, "use it or lose it days," and unfortunately state-mandated furloughs. Plus the amount of information that must be submitted and reviewed for each license renewal seems to grow each year, with more company-related information being required, and more people needing to submit information given the expanding definition of control persons, with more information that such control persons must submit. We believe it would ease the renewal tasks for licensees, state regulators, and the NMLS if renewals for all licenses were not conducted at the same time each year. We encourage CSBS to consider having different renewal dates for different industry types.

**Response:** The process is geared towards continuing to move towards making the renewal process not the annual review of license eligibility. The System is a real time system so all records should be kept up to date. Also, the one date was decided upon after balancing volume versus crossover of different license types. Companies with multiple licenses did not want to keep track of different renewal dates and state regulators do not want to do renewals all year long.

## **6. Two Factor Authorization**

We have had questions raised about the "two factor authentication" requirement once a person has obtained access to the federal registry for his or her company.

As we understand, according to the FAQ's in NMLS, the two factor authorization is a process by which two independent authentication methods (such as a security code in addition to a user name and password) are "utilized to increase confidence that an individual is authorized to access a secure system." If a company has access to just the federal registry, or BOTH the state and federal registry, then the two factor authentication is needed. Yet companies that are only on the state side of NMLS do not need this to log in.

As we further understand, the two-factor annual subscriptions cannot be transferred between users. This makes it difficult for entities to maintain their NMLS record, as each individual requiring access to the company's NMLS record must have his or her own authentication as the authentication cannot be shared among users, and there is a \$55.00 annual subscription fee. For example,

(i) a licensee's accounting person cannot get into NMLS to prepare the annual financial portion of the MCR, or submit audited financials without paying a \$55.00 annual subscription fee;

(ii) the MLO administrator cannot get into NMLS to help the licensee's MLO maintain their licenses without paying a \$55.00 annual subscription fee; and  
(iii) the state licensing person cannot get into NMLS to file quarterly MCRs, review outstanding deficiency items, file new applications, renewals or any amendments without paying a \$55.00 annual subscription fee.

All of these license maintenance or filing-related acts could have been completed without an annual subscription before the company was on the federal registry.

Moreover, it is unclear what purpose is served by this "two factor authentication" process under the federal registry. None of the information required on the form MU1R is private. In fact, the information required to be submitted with an MU1R largely can be obtained via a google search.

Is there a need to protect the information regarding the MLO's background reports? If so, then why must ALL users require the two factor authentication, when only the Account Administrators have access to federally registered MLO background reports. Organizational users cannot access this information. Could CSBS offer a specific organizational users account that ONLY has access to the state side of a company's record, so that there could be relief from the two factor authentication requirement for certain individuals?

**Response:** The two-factor authentication was instituted for the federal registry as a requirement under FISMA. In cases where a company needs to access both sides of NMLS, because it is one system and a record cannot be divided separately between the two sides, the most stringent rules (the two factor authentication) must apply.